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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,752	04/27/2006	Michael Eccarius	3988-052787	2826

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THE WEBB LAW FIRM, P.C.  
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EXAMINER
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JACYNA, J CASIMER

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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05/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,752	<b>Applicant(s)</b> ECCARIUS ET AL.	
	<b>Examiner</b> J. Casimer Jacyna	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 2/24/2004. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).
2. The following applies to the foreign references in the search report. They have not been considered because no copies have been provided.

The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

3. In regard to the U.S. reference cited in the search report:

The U.S. references cited in the Search Report of 5/31/2005 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO/SB/08A and 08B form, must be filed within the set period for reply to this Office action.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12 and 14-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Figini et al. 5,480,487. Figini discloses a device for filling a pasty product such as adhesives and is capable of filling a lumpy product as claimed including a storage container 6, means for opening and closing the storage container outlet 36, a vertically oriented gravity tube at 32 and extending from 6 to 25 in figure 1, a means for mechanically pressing 25, and rotatable elements 29 which are rotatably driven around a vertical axis 26 wherein the gravity tube has a vertical axis entering and exiting the means for pressing which is parallel to the vertical rotation axis of 26 as claimed.

6. Claims 12 and 14-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Jamison et al. 4,878,622. Jamison discloses a device for filling a viscous coating and is capable of filling a lumpy product as claimed including a storage container as is any one of the supplies attached to valves 21-26 and 28, means for opening and closing the

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storage container outlet as are valves 21-26 and 28, a gravity tube 54 or 138, a means for mechanically pressing 81 or 126, and rotatable elements 64 or 124 which are rotatably driven around a vertical axis wherein the gravity tube 54 or 138 is wound about a vertical axis extending through 68 or the center of 130 which is parallel to the vertical axis of rotation as claimed.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Figini et al. 5,480,487 in view of Calvet 4,131,399. Figini discloses a device using a peristaltic pump substantially as claimed but does not disclose a polygonal tube. However, Calvet teaches another peristaltic pump device having polygonal tubes in the embodiments of figure 14A and 19 for the purpose of preventing complete occlusion of the tube. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Figini with a polygonal tube as, for example, taught by Calvet in order to prevent complete occlusion of the tube.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jamison et al. 4,878,622 in view of Smythe 3,306,229. Jamison discloses a device using a peristaltic pump substantially as claimed but does not disclose a polygonal tube. However, Smythe teaches another peristaltic pump device and teaches the concept of having a polygonal tube as a functional alternative in the embodiment of figure 1.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Jamison with a polygonal tube as, for example, taught by Smythe because Smythe teaches that polygonal tubes are art recognized equivalents to cylindrical tubes that would work equally well with a high probability of success.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754